M.A.
5.14

ARAB REPUBLIC OF EGYPT
MINISTRY OF PUBLIC WORKS AND
WATER RESOURCES

⁂

NEW ESNA BARRAGE AND POWER PROJECT

⁂

CONDITIONS OF CONTRACT

⁂

PART 1 — GENERAL CONDITIONS

PART 2 — CONDITIONS OF PARTICULAR APPLICATION

NEW ESNA BARRAGE AND POWER PROJECT

CONDITIONS OF CONTRACT

PART I - GENERAL CONDITIONS

* * * * *

DEFINITIONS AND INTERPRETATION

Definitions

1.(1) In the Contract, as hereinafter defined, the following words and expressions shall have the meanings hereby assigned to them, except where the context otherwise requires:

(a) "Employer" means the party named in Part II who will employ the Contractor and the legal successors in title to the Employer, but not, except with the consent of the Contractor, any assignee of the Employer.

(b) "Contractor" means the person or persons, firm or company whose tender has been accepted by the Employer and includes the Contractor's personal representatives, successors and permitted assigns.

(c) "Engineer" means the Engineer designated as such in Part II, or other the Engineer appointed from time to time by the Employer and notified in writing to the Contractor to act as Engineer for the purposes of the Contract in place of the Engineer so designated.

(d) "Engineer's Representative" means any resident engineer or assistant of the Engineer, or any clerk of works appointed from time to time by the Employer or the Engineer to perform the duties set forth in Clause 2 hereof, whose authority shall be notified in writing to the Contractor by the Engineer.

(e) "Works" shall include both Permanent Works and Temporary Works.

(f) "Contract" means the Conditions of Contract, Specification, Drawings, priced Bill of Quantities, Schedule of Rates and Prices, if any, Tender, Letter of Acceptance and the Contract Agreement, if completed.

(g) "Contract Price" means the sum named in the Letter of Acceptance, subject to such additions thereto or deductions therefrom as may be made under the provisions hereinafter contained.

(h) "Constructional Plant" means all appliances or things of whatsoever nature required in or about the execution or maintenance of the Works but does not include materials or other things intended to form or forming part of the Permanent Works.

(i) "Temporary Works" means all temporary works of every kind required in or about the execution or maintenance of the Works.

(j) "Permanent Works" means the permanent works to be executed and maintained in accordance with the Contract.

(k) "Specification" means the specification referred to in the Tender and any modification thereof or addition thereto as may from time to time be furnished or approved in writing by the Engineer.

(l) "Drawings" means the drawings referred to in the Specification and any modification of such drawings approved in writing by the Engineer and such other drawings as may from time to time be furnished or approved in writing by the Engineer.

(m) "Site" means the land and other places on, under, in or through which the Permanent Works or Temporary Works designed by the Engineer are to be executed and any other lands and places provided by the Employer for working space or any other purpose as may be specifically designated in the Contract as forming part of the Site.

(n) "Approved" means approved in writing, including subsequent written confirmation of previous verbal approval and "approval" means approval in writing, including as aforesaid.

Singular and Plural

1.(2) Words importing the singular only also include the plural and vice versa where the context requires.

Headings or Notes

1.(3) The headings and marginal notes in these Conditions of Contract shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction thereof or of the Contract.

Cost

1.(4) The word "cost" shall be deemed to include overhead costs whether on or off the Site.

ENGINEER AND ENGINEER'S REPRESENTATIVE

Duties and Power of Engineer and Engineer's Representative

2.(1) The Engineer shall carry out such duties in issuing decisions, certificates and orders as are specified in the Contract. In the event of the Engineer being required in terms of his appointment by the Employer to obtain the specific approval of the Employer for the execution of any part of these duties, this shall be set out in Part II of these Conditions.

2.(2) The Engineer's Representative shall be responsible to the Engineer and his duties are to watch and supervise the Works and to test and examine any materials to be used or workmanship employed in connection with the Works. He shall have no authority to relieve the Contractor of any of his duties or obligations under the Contract nor, except as expressly provided hereunder or elsewhere in the Contract, to order any work involving delay or any extra payment by the Employer, nor to make any variation of or in the Works.

The Engineer may from time to time in writing delegate to the Engineer's Representative any of the powers and authorities vested in the Engineer and shall furnish to the Contractor and to the Employer a copy of all such written delegations of powers and authorities. Any written instruction or approval given by the Engineer's Representative to the Contractor within the terms of such delegation, but not otherwise, shall bind the Contractor and the Employer as though it had been given by the Engineer. Provided always as follows:-

(a) Failure of the Engineer's Representative to disapprove any work or materials shall not prejudice the power of the engineer thereafter to disapprove such work or materials and to order the pulling down, removal or breaking up thereof.

(b) If the Contractor shall be dissatisfied by reason of any decision of the Engineer's Representative he shall be entitled to refer the matter to the Engineer, who shall thereupon confirm, reverse or vary such decision.

ASSIGNMENT AND SUB-LETTING

Assignment

3. The Contractor shall not assign the Contract or any part thereof, or any benefit or interest therein or thereunder, otherwise than by a charge in favour of the Contractor's bankers of any monies due or to become due under this Contract, without the prior written consent of the Employer.

Sub-letting

4. The Contractor shall not sub-let the whole of the Works. Except where otherwise provided by the Contract, the Contractor shall not sub-let any part of the Works without the prior written consent of the Engineer, which shall not be unreasonably withheld, and such consent, if given, shall not relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts, defaults and neglects of any sub-contractor, his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Contractor, his agents, servants or workmen. Provided always that the provision of labour on a piecework basis shall not be deemed to be a sub-letting under this Clause.

CONTRACT DOCUMENTS

Language/s and Law.

5.(1) There shall be stated in Part II of these Conditions:-

(a) the language or languages in which the Contract documents shall be drawn up and

(b) the country or state, the law of which is to apply to the Contract and according to which the Contract is to be construed.

If the said documents are written in more than one language, the language according to which the Contract is to be construed and interpreted shall also be designated in Part II, being therein designated the "Ruling Language".

Documents Mutually Explanatory

5.(2) Except if and to the extent otherwise provided by the Contract, the provisions of the Conditions of Contract Part I and II shall prevail over those of any other document forming part of the Contract. Subject to the foregoing, the several documents forming the Contract are to be taken as mutually explanatory of one another, but in case of ambiguities or discrepancies the same shall be explained and adjusted by the Engineer who shall thereupon issue to the Contractor instructions thereon. Provided always that if, in the opinion of the Engineer, compliance with any such instructions shall involve the Contractor in any cost, which by reason of any such ambiguity or discrepancy could not reasonably have been foreseen by the Contractor, the Engineer shall certify and the Employer shall pay such additional sum as may be reasonable to cover such costs.

Custody of Drawings

6.(1) The Drawings shall remain in the sole custody of the Engineer, but two copies thereof shall be furnished to the Contractor free of charge. The Contractor shall provide and make at his own expense any further copies required by him. At the completion of the Contract the Contractor shall return to the Engineer all Drawings provided under the Contract.

One Copy of Drawings to be Kept on Site

6.(2) One copy of the Drawings, furnished to the Contractor as aforesaid, shall be kept by the Contractor on the Site and the same shall at all reasonable times be available for inspection and use by the Engineer and the Engineer's Representative and by any other person authorised by the Engineer in writing.

Disruption of Progress

6.(3) The Contractor shall give written notice to the Engineer whenever planning or progress of the Works is likely to be delayed or disrupted unless any further drawing or order, including a direction, instruction or approval, is issued by the Engineer within a reasonable time. The notice shall include details of the drawing or order required and of why and by when it is required and of any delay or disruption likely to be suffered if it is late.

Delays and cost of delay of Drawings

6.(4) If, by reason of any failure or inability of the Engineer to issue within a time reasonable in all the circumstances any drawing or order requested by the Contractor in accordance with sub-Clause (3) of this Clause, the Contractor suffers delay and/or incurs costs then the Engineer shall take such delay into account in determining any extension of time to which the Contractor is entitled under Clause 44 hereof and the Contractor shall be paid the amount of such cost as shall be reasonable.

Further Drawings and Instructions

7. The Engineer shall have full power and authority to supply to the Contractor from time to time, during the progress of the Works, such further drawings and instructions as shall be necessary for the purpose of the proper and adequate execution and maintenance of the Works. The Contractor shall carry out and be bound by the same.

GENERAL OBLIGATIONS

Contractor's General Responsibilities

8.(1) The Contractor shall, subject to the provisions of the Contract, and with due care and diligence, execute and maintain the Works and provide all labour, including the supervision thereof, materials, Constructional Plant and all other things, whether of a temporary or permanent nature, required in and for such execution and maintenance, so far as the necessity for providing the same is specified in or is reasonably to be inferred from the Contract.

8.(2) The Contractor shall take full responsibility for the adequacy stability and safety of all site operations and methods of construction, provided that the Contractor shall not be responsible except as may be expressly provided in the Contract, for the design or specification of the Permanent Works, or for the design or specification of any Temporary Works prepared by the Engineer.

Contract Agreement

9. The Contractor shall when called upon so to do enter into and execute a Contract Agreement, to be prepared and completed at the cost of the Employer, in the form annexed with such modification as may be necessary.

Performance Bond

(Cau2lohe

10. If, for the due performance of the Contract, the Tender shall contain an undertaking by the Contractor to obtain, when required, a bond or guarantee of an insurance company or bank, or other approved sureties to be jointly and severally bound with the Contractor to the Employer, in a sum not exceeding that stated in the Letter of Acceptance for

such bond or guarantee, the said insurance company or bank or sureties and the terms of the said bond or guarantee shall be such as shall be approved by the Employer. The obtaining of such bond or guarantee or the provision of such sureties and the cost of the bond or guarantee to be so entered into shall be at the expense in all respects of the Contractor, unless the Contract otherwise provides.

Inspection of Site

11. The Employer shall have made available to the Contractor with the Tender documents such data on hydrological and sub-surface conditions as shall have been obtained by or on behalf of the Employer from investigations undertaken relevant to the Works and the Tender shall be deemed to have been based on such data, but the Contractor shall be responsible for his own interpretation thereof.

The Contractor shall also be deemed to have inspected and examined the Site and its surroundings and information available in connection therewith and to have satisfied himself, so far as is practicable, before submitting his Tender, as to the form and nature thereof, including the sub-surface conditions, the hydrological and climatic conditions, the extent and nature of work and materials necessary for the completion of the Works, the means of access to the Site and the accommodation he may require and, in general, shall be deemed to have obtained all necessary information, subject as above mentioned, as to risks, contingencies and all other circumstances which may influence or affect his Tender.

Sufficiency of Tender.
Adverse Physical Conditions and Artificial Obstructions

12. The Contractor shall be deemed to have satisfied himself before tendering as to the correctness and sufficiency of his

Tender for the Works and of the rates and prices stated in the priced Bill of Quantities and the Schedule of Rates and Prices, if any, which Tender rates and prices shall, except insofar as it is otherwise provided in the Contract, cover all his obligations under the Contract and all matters and things necessary for the proper execution and maintenance of the Works. If, however, during the execution of the Works the Contractor shall encounter physical conditions, other than climatic conditions on the Site, or artificial obstructions, which conditions or obstructions could, in his opinion, not have been reasonably foreseen by an experienced contractor, the Contractor shall forthwith give written notice thereof to the Engineer's Representative and if, in the opinion of the Engineer, such conditions or artificial obstructions could not have been reasonably foreseen by an experienced contractor, then the Engineer shall certify and the Employer shall pay the additional cost to which the Contractor shall have been put by reason of such conditions, including the proper and reasonable cost

(a) of complying with any instruction which the Engineer may issue to the Contractor in connection therewith, and

(b) of any proper and reasonable measures approved by the Engineer which the Contractor may take in the absence of specific instructions from the Engineer,

as a result of such conditions or obstructions being encountered.

Work to be to the Satisfaction of Engineer

13. Save insofar as it is legally or physically impossible, the Contractor shall execute and maintain the Works in strict accordance with the Contract to the satisfaction of the Engineer and shall comply with and adhere strictly to the Engineer's instructions and directions on

any matter whether mentioned in the Contract or not, touching or concerning the Works. The Contractor shall take instructions and directions only from the Engineer or, subject to the limitations referred to in Clause 2 hereof, from the Engineer's Representative.

Programme to be Furnished.

14.(1) Within the time stated in Part II of these Conditions, the Contractor shall, after the acceptance of his Tender, submit to the Engineer for his approval a programme showing the order of procedure in which he proposes to carry out the Works. The Contractor shall whenever required by the Engineer or Engineer's Representative, also provide in writing for his information a general description of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works.

14.(2) If at any time it should appear to the Engineer that the actual progress of the Works does not conform to the approved programme referred to in sub-clause (1) of this Clause, the Contractor shall produce, at the request of the Engineer, a revised programme showing the modifications to the approved programme necessary to ensure completion of the Works within the time for completion as defined in Clause 43 hereof.

14.(3) The submission to and approval by the Engineer or Engineer's Representative of such programmes or the furnishing of such particulars shall not relieve the Contractor of any of his duties or responsibilities under the Contract

Contractor's Superintendence

15. The Contractor shall give or provide all necessary superintendence during the execution of the Works and as long thereafter as the Engineer may consider necessary for the proper fulfilling of the Contractor's obligations under the Contract. The Contractor, or a competent

and authorised agent or representative approved of in writing by the Engineer, which approval may at any time be withdrawn, is to be constantly on the Works and shall give his whole time to the superintendence of the same. If such approval shall be withdrawn by the Engineer, the Contractor shall, as soon as is practicable, having regard to the requirement of replacing him as hereinafter mentioned, after receiving written notice of such withdrawal, remove the agent from the Works and shall not thereafter employ him again on the Works in any capacity and shall replace him by another agent approved by the Engineer. Such authorised agent or representative shall receive, on behalf of the Contractor, directions and instructions from the Engineer, or, subject to the limitations of Clause 2 hereof, the Engineer's Representative.

Contractor's Employees

16.(1) The Contractor shall provide and employ on the Site in connection with the execution and maintenance of the Works

(a) only such technical assistants as are skilled and experienced in their respective callings and such sub-agents, foremen and leading hands as are competent to give proper supervision to the work they are required to supervise, and

(b) such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution and maintenance of the Works.

16.(2) The Engineer shall be at liberty to object to and require the Contractor to remove forthwith from the Works any person employed by the Contractor in or about the execution or maintenance of the Works who, in the opinion of the Engineer, misconducts himself, or is incompetent or negligent in the proper performance of his duties, or whose employement is otherwise considered by the Engineer to be undesirable and such person shall not be again employed upon the Works without the written permission of the Engineer. Any person so removed from the Works shall be replaced as soon as possible by a competent substitute approved by the Engineer.

Setting-out

17. The Contractor shall be responsible for the true and proper setting-out of the Works in relation to original points, lines and levels of reference given by the Engineer in writing and for the correctness, subject as above mentioned, of the position, levels, dimensions and alignment of all parts of the Works and for the provision of all necessary instruments, appliances and labour in connection therewith. If, at any time during the progress of the Works, any error shall appear or arise in the position, levels, dimensions or alignment of any part of the Works, the Contractor, on being required so to do by the Engineer or the Engineer's Representative, shall, at his own cost, rectify such error to the satisfaction of the Engineer or the Engineer's Representative, unless such error is based on incorrect data supplied in writing by the Engineer or the Engineer's Representative, in which case the expense of rectifying the same shall be borne by the Employer. The checking of any setting-out or of any line or level by the Engineer or the Engineer's Representative shall not in any way relieve the Contractor of his responsibility for the correctness thereof and the Contractor shall carefully protect and preserve all bench-marks, sight-rails, pegs and other things used in setting-out the Works.

Boreholes and Exploratory Excavation

18. If, at any time during the execution of the Works, the Engineer shall require the Contractor to make boreholes or to carry out exploratory excavation, such requirement shall be ordered in writing and shall be deemed to be an addition

ordered under the provisions of Clause 51 hereof, unless a provisional sum in respect of such anticipated work shall have been included in the Bill of Quantities.

Watching and Lighting

19. The Contractor shall in connection with the Works provide and maintain at his own cost all lights, guards, fencing and watching when and where necessary or required by the Engineer or the Engineer's Representative, or by any duly constituted authority, for the protection of the Works, or for the safety and convenience of the public or others.

Care of Works

20.(1) From the commencement of the Works until the date stated in the Certificate of Completion for the whole of the Works pursuant to Clause 48 hereof the Contractor shall take full responsibility for the care thereof. Provided that if the Engineer shall issue a Certificate of Completion in respect of any part of the Permanent Works the Contractor shall cease to be liable for the care of that part of the Permanent Works from the date stated in the Certificate of Completion in respect of that part and the responsibility for the care of that part shall pass to the Employer. Provided further that the Contractor shall take full responsibility for the care of any outstanding work which he shall have undertaken to finish during the Period of Maintenance until such outstanding work is completed. In case any damage, loss or injury shall happen to the Works, or to any part thereof, from any cause whatsoever, save and except the excepted risks as defined in sub-clause (2) of this Clause, while the Contractor shall be responsible for the care thereof the Contractor shall at his own cost, repair and make good the same, so that at completion the Permanent Works shall be in good order and condition and in conformity in every respect with the requirements of the Contract and the Engineer's instructions. In the event of any such damage, loss or injury happening from any of the excepted risks, the Contractor shall, if and to the extent required by the Engineer and subject always to the provisions of Clause 65 hereof, repair and make good the same as aforesaid at the cost of the Employer. The Contractor shall also be liable for any damage to the Works occasioned by him in the course of any operation carried out by him for the purpose of completing any outstanding work or complying with his obligations under Clause 49 or 50 hereof.

Excepted Risks

20.(2) The "excepted risks" are war, hostilities (whether war be declared or not), invasion, act of foreign enemies, rebellion, revolution, insurrection or military or usurped power, civil war, or unless solely restricted to employees of the Contractor or of his sub-contractors and arising from the conduct of the Works, riot, commotion or disorder, or ionising radiations or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive, nuclear assembly or nuclear component thereof, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds, or any such operation of the forces of nature as an experienced contractor could not foresee, or reasonably make provision for or insure against all of which are herein collectively referred to as "the excepted risks". In the event that the performance of the Contract is delayed by force majeure, either party shall, within 15 calendar days of the commencement of any such delay, give the other party written notice thereof including a statement describing force majeure and its effect upon the performance of the Contract. If the delay is excusable, the Employer and Contractor shall, within 10 days after receipt of such notice, consult regarding action to be taken.

In the event of a force majeure, Contractor, unless directed otherwise in writing by the Employer shall continue to undertake and perform the duties set forth in the Contract as far as reasonably practicable.

Within 15 calendar days after the termination of any such delay, Contractor shall file a written notice with the Employer specifying the actual duration of the delay and the delay impact with respect to each of the affected key dates for the completion of the works. Failure to give either of the above notices shall be sufficient ground for denial of an extension of time. The Employer will evaluate Contractor's notice specifying the actual duration of the delay and the delay impact and an equitable adjustment to the time of performance of the affected key date(s) set forth in the execution program of the completion of works.

If a force majeure event delays the performance of the Contract beyond a continuous period of 60 calendar days, Contractor shall also be entitled to additional costs as a consequence of force majeure beyond the said 60 calendar days, for the period of time commencing with the 61st day of force majeure, in accordance with article entitled "Suspension".

Insurance of Works, etc.

21. Without limiting his obligations and responsibilities under Clause 20 hereof, the Contractor shall insure in the joint names of the Employer and the Contractor against all loss or damage from whatever cause arising, other than the excepted risks, for which he is responsible under the terms of the Contract and in such manner that the Employer and Contractor are covered for the period stipulated in Clause 20(1) hereof and are also covered during the Period of Maintenance for loss or damage arising from a cause, occurring prior to the commencement of the Period of Maintenance, and for any loss or damage occasioned by the Contractor in the course of any operations carried out by him for the purpose of complying with his obligations under Clause 49 and 50 hereof:

(a) The Works for the time being executed to the estimated current contract value thereof, or such additional sum as may be specified in Part II in the Clause numbered 21, together with the materials for incorporation in the Works at their replacement value.

(b) The Constructional Plant and other things brought on to the Site by the Contractor to the replacement value of such Constructional Plant and other things.

Such insurance shall be effected with an insurer and in terms approved by the Employer, which approval shall not be unreasonably withheld, and the Contractor shall, whenever required, produce to the Employer the policy or policies of insurance and the receipts for payment of the current premiums.

Damage to Persons and Property

22.(1) The Contractor shall, except if and so far as the Contract provides otherwise, indemnify the Employer against all losses and claims in respect of injuries or damage to any person or material or physical damage to any property whatsoever which may arise out of or in consequence of the execution and maintenance of the Works and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect of or in relation thereto except any compensation or damages for or with respect to:

(a) The permanent use or occupation of land by the Works or any part thereof.

(b) The right of the Employer to execute the Works or any part thereof on, over, under, in or through any land.

(c) Deleted.

(d) Deleted.

Indemnity by Employer

22.(2) The Employer shall indemnify the Contractor against all claims, proceedings, damages, costs, charges and expenses in respect of the matters referred to in the proviso to sub-clause (1) of this Clause.

Third Party Insurance

23.(1) Before commencing the execution of the Works the Contractor, but without limiting his obligations and responsibilities under Clause 22 hereof, shall insure against his liability for any material or physical damage, loss or injury which may occur to any property, including that of the Employer, or to any person, including any employee of the Employer, by or arising out of the execution of the Works or in the carrying out of the Contract, otherwise than due to the matters referred to in the proviso to Clause 22.(1) hereof.

Minimum Amount of Third Party Insurance

23.(2) Such insurance shall be effected with an insurer and in terms approved by the Employer, which approval shall not be unreasonably withheld, and for at least the amount stated in the Appendix to the Tender. The Contractor shall, whenever required, produce to the Engineer or the Engineer's Representative the policy or policies of insurance and the receipts for payment of the current premiums.

Provision to Indemnify Employer

23.(3) The terms shall include a provision whereby, in the event of any claim in respect of which the Contractor would be entitled to receive indemnity under the policy being brought or made against the Employer, the insurer will indemnify the Employer against such claims and any costs, charges and expenses in respect thereof.

Accident or Injury to Workmen

24.(1) The Employer shall not be liable for or in respect of any damages or compensation payable at law in respect or in consequence of any accident or injury to any workman or other person in the employment of the Contractor or any sub-contractor, save and except an accident or injury resulting from any act of default of the Employer, his agents, or servants. The Contractor shall indemnify and keep indemnified the Employer against all such damages and compensation, save and except as aforesaid, and against all claims, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

Insurance against Accident, etc., to Workmen

24.(2) The Contractor shall insure against such liability with an insurer approved by the Employer, which approval shall not be unreasonably withheld, and shall continue such insurance during the whole of the time that any persons are employed by him on the Works and shall, when required, produce to the Engineer or the Engineer's Representative such policy of insurance and the receipt for payment of the current premium. Provided always that, in respect of any persons employed by any Sub-contractor, the Contractor's obligation to insure as aforesaid under this sub-clause shall be satisfied if the sub-contractor shall have insured against the liability in respect of such persons in such manner that the Employer is indemnified under the policy, but the Contractor shall require such sub-contractor to produce to the Engineer or the Engineer's Representative, when required, such policy of insurance and the receipt for the payment of the current premium.

Remedy on Contractor's Failure to Insure

25. If the Contractor shall fail to effect and keep in force the insurances referred to in Clauses 21, 23 and 24 hereof, or any other insurance which he may be required to effect under the terms of the Contract, then and in any such case the Employer may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by the Employer as aforesaid from any monies due or which may become due to the Contractor, or recover the same as a debt due from the Contractor.

Giving of Notices and Payment of Fees

26.(1) The Contractor shall give all notices and pay all fees required to be given or paid by any National or State Statute, Ordinance, or other law, or any regulation, or bye-law of any local or other duly constituted authority in relation to the execution of the Works and by the rules and regulations of all public bodies and companies whose property or rights are affected or may be affected in any way by the Works.

Compliance with Statutes, Regulations, etc.

26.(2) The Contractor shall conform in all respects with the provisions of any such Statute, Ordinance or Law as aforesaid and the regulations or bye-laws of any local or other duly constituted authority which may be applicable to the Works and with such rules and regulations of public bodies and companies as aforesaid and shall keep the Employer indemnified against all penalties and liability of every kind for breach of any such Statute, Ordinance or Law, regulation or bye-law.

Fossils, etc.

27. All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interest discovered on the site of the Works shall as between the Employer and the Contractor be deemed to be the absolute property of the Employer. The Contractor shall take reasonable precautions to prevent his workmen or any other persons from removing or damaging any such article or thing and shall immediately upon discovery thereof and, before removal, acquaint the Engineer's Representative of such discovery and carry out, at the expense of the Employer, the Engineer's Representative's orders as to the disposal of the same.

Patent Rights and Royalties

28. The Contractor shall save harmless and indemnify the Employer from and against all claims and proceedings for or on account of infringement of any patent rights, design trademark or name or other protected rights in respect of any Constructional Plant, machine work, or material used for or in connection with the Works or any of them and from and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto. Except where otherwise specified, the Contractor shall pay all tonnage and other royalties, rent and other payments or compensation, if any, for getting stone, sand, gravel, clay or other materials required for the works or any of them.

Interference with Traffic and Adjoining Properties

29. All operations necessary for the execution of the Works shall, so far as compliance with the requirements of the Contract permits, be carried on so as not to interfere unnecessarily or improperly with the convenience of the public, or the access to, use and occupation of public or

private roads and footpaths to or of properties whether in the possession of the Employer or of any other person. The Contractor shall save harmless and indemnify the Employer in respect of all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of, or in relation to, any such matters in so far as the Contractor is responsible therefor.

Extraordinary Traffic

30.(1) The Contractor shall use every reasonable means to prevent any of the highways or bridges communicating with or on the routes to the Site from being damaged or injured by any traffic of the Contractor or any of his sub-contractors and, in particular, shall select routes, choose and use vehicles and restrict and distribute loads so that any such extraordinay traffic as will inevitably arise from the moving of plant and material from and to the Site shall be limited, as far as reasonably possible, and so that no unnecessary damage or injury may be occasioned to such highways and bridges.

Special Loads

30.(2) Should it be found necessary for the Contractor to move one or more loads of Constructional Plant, machinery or pre-constructed units or parts of units of work over part of a highway or bridge, the moving whereof is likely to damage any highway or bridge unless special protection or strengthen is carried out, then the Contractor shall inform the Engineer or Engineer's representative, 60 days before shipping this equipment, and give him notice of the weigth and other particulars of the load to be moved and his proposals for protecting or strengthening the said highway or bridge The Engineer shall review the Contractor's proposal and inform the Contractor by any remarks within 30 days from receiving such notice The Contractor shall apply for the necessary permits and carry out the work required. The Employer may request the Contractor to bring the status to its original condition. The cost of improvement and bring the status to its original condition shall be to the account of the Contractor.

Settlement of Extraordinary Traffic Claims

30.(3) The Contractor shall be responsible for any charges or expenses or any damage or any claim raised by any third party which may occur during transport of material or equipment.

Waterborne Traffic

30.(4) Where the nature of the Works is such as to require the use by the Contractor of waterborne transport the foregoing provisions of this Clause shall be construed as though "highway" included a lock, dock, sea wall or other structure related to a waterway and "vehicle" included craft, and shall have effect accordingly.

Opportunities for other Contractors

31. The Contractor shall, in accordance with the requirements of the Engineer, afford all reasonable opportunities for carrying out their work to any other Contractors employed by the Employer and their workmen and to the workmen of the Employer and of any other duly constituted authorities who may be employed in the execution on or near the Site of an work not included in the Contract or of any contract which the Employer may enter into in connection with or ancillary to the Works. If, however, the Contractor shall, on the written request of the Engineer or the Engineer's Representative, make available to any such other contractor, or to the Employer or any such authority, any roads or ways for the maintenance of which the Contractor is responsible, or permit the use by any such of the Contractor's scaffolding or other plant on the Site, or provide any other

service of whatsoever nature for any such, the Employer shall pay to the Contractor in respect of such use or service such sum or sums as shall, in the opinion of the Engineer, be reasonable.

Contractor to keep Site Clear

32.(1) During the progress of the Works the Contractor shall keep the Site reasonably free from all unnecessary obstruction and shall store or dispose of any Constructional Plant and surplus materials and clear away and remove from the Site any wreckage, rubbish or Temporary Works no longer required at his own cost to the area designated by the Engineer.

32.(2) The Contractor shall segregate the wood and the scrap metal from the trash.

Clearance of Site on Completion

33. On the completion of the Works the Contractor shall clear away and remove from the Site all Constructional Plant, surplus materials, rubbish and Temporary Works of every kind, and leave the whole of the Site and Works clean and in a workmanlike condition to the satisfaction of the Engineer after good repair.

LABOUR

Engagement of Labour

34.(1) The Contractor shall make his own arrangements for the engagement of all labour, local or otherwise, and, save insofar as the Contract otherwise provides, for the transport, housing feeding and payment thereof.

Supply of Water

34.(2) The Contractor shall, so far as is reasonably practicable, having regard to local conditions, provide on the Site, to the satisfaction of the Engineer's Representative, an adequate supply of drinking and other water for the use of the Contractor's staff and work people.

Alcoholic Liquor or Drugs

34.(3) The Contractor shall not, otherwise than in accordance with the Statutes, Ordinances and Government Regulations or Orders for the time being in force, import, sell, give, barter or otherwise dispose of any alcoholic liquor, or drugs, or permit or suffer any such importation, sale, gift, barter or disposal by his sub-contractors, agents or employees.

Arms and Ammunition

34.(4) The Contractor shall not give, barter or otherwise dispose of to any person or persons, any arms or ammunition of any kind or permit or suffer the same as aforesaid.

Festivals and Religious Customs

34.(5) The Contractor shall in all dealings with labour in his employment have due regard to all recognised festivals, days of rest and religious or other customs.

Epidemics

34.(6) In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders and requirements as may be made by the Government, or the local medical or sanitary authorities for the purpose of dealing with and overcoming the same

Disorderly Conduct,etc.

34.(7) The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst his employees and for the preservation of peace and protection of persons and property in the neighbourhood of the Works against the same.

Observance by Sub-Contractors

34.(8) The Contractor shall be responsible for observance by his sub-contractors of the foregoing provisions.

34.(9) Any other conditions affecting labour and wages shall be as set out in Part II in the clause numbered 34 as may be necessary.

Returns of Labour, Etc

35. The Contractor shall, if required by the Engineer, deliver to the Engineer's Representative, or at his office, a return in detail in such form and at such intervals as the Engineer may prescribe showing the supervisory staff and the numbers of the several classes of labour from time to time employed by the Contractor on the Site and such information respecting Constructional Plant as the Engineer's Representative may require.

MATERIALS AND WORKMANSHIP

Quality of Materials and Workmanship and Tests

36.(1) All materials and workmanship shall be of the respective kinds described in the Contract and in accordance with the Engineer's instructions and shall be subjected from time to time to such tests as the Engineer may direct at the place of manufacture or fabrication, or on the Site or at such other place or places as may be specified in the Contract, or at all or any of such places. The Contractor shall provide such assistance, instruments, machines, labour and materials as are normally required for examining, measuring and testing any work and the quality, weight or quantity of any material used and shall supply samples of materials before incorporation in the Works for testing as may be selected and required by the Engineer.

Cost of Samples

36.(2) All samples shall be supplied by the Contractor at his own cost if the supply thereof is clearly intended by or provided for in the Contract or have been requested by other concerned Authorities, but if not, then at the cost of the Employer.

Cost of Tests

36.(3) The cost of making any test shall be borne by the Contractor if such test is clearly intended by or provided for in the Contract and, in the cases only of a test under load or of a test to ascertain whether the design of any finished or partially finished work is appropriate for the purposes which it was intended to fulfil, is particularised in the Contract in sufficient detail to enable the Contractor to price or allow for the same in his Tender.

Cost of Tests not provided for, etc.

36.(4) If any test is ordered by the Engineer which is either

(a) not so intended by or provided for except which have been requested by other concerned authorities, or

(b) (in the cases above mentioned) is not so particularised, or

(c) though so intended or provided for is ordered by the Engineer to be carried out by an independent person at any place other than the Site or the place of manufacture or fabrication of the materials tested, then the cost of such test shall be borne by the Contractor, if the test shows the workmanship or materials not to be in accordance with the provisions of the Contract or the Engineer's instructions, but otherwise by the Employer.

Inspection of Operations

37. The Engineer and any person authorised by him shall at all times have access to the Works and to all workshops and places where work is being prepared or from where materials, manufactured articles or machinery are being obtained for the Works and the Contractor shall afford every facility for and every assistance in or in obtaining the right to such access including access to drawings and production data at no charge.

Examination of Work before Covering up

38.(1) No work shall be covered up or put out of view without the approval of the Engineer or the Engineer's Representative and the Contractor shall afford full opportunity for the Engineer or the Engineer's Representative to examine and measure any work which is about to be covered up or put out of view and to examine foundations before permanent work is placed thereon. The Contractor shall give due notice to the Engineer's Representative whenever any such work or foundations is or are ready or about to be ready for examination and the Engineer's Representative shall, without unreasonable delay, unless he considers it unnecessary and advises the Contractor accordingly, attend for the purpose of examining and measuring such work or of examining such foundations.

Uncovering and Making Openings

38.(2) The Contractor shall uncover any part or parts of the Works or make openings in or through the same as the Engineer may from time to time direct and shall reinstate and make good such part or parts to the satisfaction of the Engineer. If any such part or parts have been covered up or put out of view after compliance with the requirement of sub-clause (1) of this Clause and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating and making good the same shall be borne by the Employer, but in any other case all costs shall be borne by the Contractor.

Removal of Improper Work and Materials

39.(1) The Engineer shall during the progress of the Works have power to order in writing from time to time

(a) the removal from the Site, within such time or times as may be specified in the order, of any materials which, in the opinion of the Engineer, are not in accordance with the Contract

(b) The substitution of proper and suitable materials and

(c) The removal and proper re-execution, notwithstanding any previous test thereof or interim payment therefor, of any work which in respect of materials or workmanship is not, in the opinion of the Engineer, in accordance with the Contract.

Default of Contractor in Compliance

39.(2) In case of default on the part of the Contractor in carrying out such order, the Employer shall be entitled to employ and pay other persons to carry out the same and all expenses consequent thereon or incidental thereto shall be recoverable from the Contractor by the Employer, or may be deducted by the Employer from any monies due or which may become due to the Contractor.

Suspension of Work

40. The Employer may, at its sole option, decide to suspend at any time the performance of all or any portion of the Works to be performed under the Contract. Contractor will be notified of such Employer decision in writing. Such notice of suspension of the Works will designate the amount and type of plant and Construction Equipment to be committed to work at the site during the period of suspension. Contractor shall use its best efforts to utilize its Construction Equipment and labour in such a manner as to minimize costs associated with suspension.

Upon receipt of any such notice, Contractor shall unless the notice requires otherwise:

(a) Immediately discontinue the Works on the date and to the extent specified in the notice.

(b) Place no further orders or subcontracts for Plant or Construction Equipment with respect to supended work other than to the extent required in the notice.

(c) Promptly make every reasonable effort to obtain suspension upon terms satisfactory to the Employer of all subcontracts, to the extent they relate to performance of work suspended. Upon receipt of notice from the Employer to resume suspended Works, Contractor shall immediately resume performance of the suspended Works to the extent required in the notice.

Contractor shall submit to the Employer in writing its claim for extra costs and revised Contractor's Schedule within 30 (thirty) calendar days after receipt of notice to resume suspended works

The Employer will evaluate Contractor's claim and, as full compensation for such suspension make an equitable adjustment to the Contractor's Schedule and reimburse the following costs (excluding profits), reasonably incurred, without duplication of any item, to the extent that such costs directly result from such suspension:

(aa) A standby charge to be paid to Contractor during the period of suspension of any work at the Site. Such standby charge shall be sufficient to compensate Contractor for keeping, to the extent required in the notice, its organization and equipment committed to the work on a standby status at the Site.

(bb) All reasonable costs associated with mobilization and demobilization of Construction Equipment and labour at the Site.

(cc) An equitable amount to reimburse Contractor for the cost of maintaining and protecting that portion of the work at the Site upon which work has been suspended.

(dd) An equitable adjustment in the cost of performing the remaining portion of work if, as a result of any such suspension of work, the cost to Contractor of performing said remaining work is increased or decreased at the Site.
An equitable adjustment in the cost incidental to suspension of Plant not received at the Site.

Notwithstanding the provision of the above subclause, should the suspension of the Works directly result in the suspension of Plant which was scheduled for shipment to the Site within 6 months from the date of receipt of notice of suspension as shown in contractor's schedule or the suspension exceeds a continuous period of 12 months; the Employer & Contractor agree to consult each other to assess the impact of such suspension on the portion of suspended Works. For the suspended Plant, the Employer agrees to pay to the Contractor reasonable costs of the portion of the Plant completed, provided such costs were incurred prior to the suspension and do not exceed 40 percent of Contract price for the plant and furthermore, Contractor agrees to provide a Bank Guarantee for such costs in the form acceptable to the Employer.

For the remaining portion of Works, an equitable adjustment for the costs of completed portions of the Works will be mutually agreed, provided such costs were incurred prior to suspension.
No compensation or extension of time will be granted for any suspension if:

(aaa) The execution of the Contract would have been so suspended by any other cause, including fault negligence, or from Contractor's non compliance with the requirements of the Contract, or

(bbb) For which an equitable adjustment is provided for or excluded under any other provision of the Contract.

COMMENCEMENT TIME AND DELAYS

Commencement of Works

41. The Contractor shall commence the Works on Site within the period named in the Appendix to the Tender after the receipt by him of a written order to this effect from the Engineer and shall proceed with the same with due expedition and without delay, except as may be expressly sanctioned or ordered by the Engineer, or be wholly beyond the Contractor's control

Possession of Site

42.(1) Save insofar as the Contract may prescribe, the extent of portions of the Site of which the Contractor is to be given possession from time to time and the order in which such portions shall be made available to him and, subject to any requirement in the Contract as to the order in which the Works shall be executed, the Employer will, with the Engineer's written order to commence the Works, give to the Contractor possession of so much of the Site as may be required to enable the Contractor to commence and proceed with the execution of the Works in accordance with the programme referred to in Clause 14 hereof, if any, and otherwise in accordance with such reasonable proposals of the Contractor as he shall, by written notice to the Engineer, make and will, from time to time as the Works proceed, give to the Contractor possession of such further portions of the Site as may be required to enable the Contractor to proceed with the execution of the Works with due despatch in accordance with the said programme or proposals, as the case may be. If the Contractor suffers delay or incurs cost from failure on the part of the Employer to give possession in accordance with the terms of this Clause, the Engineer shall grant an extension of time for the completion of the Works and certify such sum as, in his opinion, shall be fair to cover the cost incurred, which sum shall be paid by the Employer.

Wayleaves, etc.

42.(2) The Contractor shall bear all costs and charges for special or temporary wayleaves required by him in connection with access to the Site. The Contractor shall also provide at his own cost any additional accommodation outside the Site required by him for the purposes of the Works.

Time for Completion

43. Subject to any requirement in the Contract as to completion of any section of the Works before completion of the whole, the whole of the Works shall be completed, in accordance with the provisions of Clause 48 hereof, within the time stated in the Contract calculated from the last day of the period named in the Appendix to the Tender as that within which the Works are to be commenced, or such extended time as may be allowed under Clause 44 hereof.

Extension of Time for Completion

44. Should the amount of extra or additional work of any kind or any cause of delay referred to in these Conditions, or exceptional adverse climatic conditions, or other special circumstances of any kind whatsoever which may occur, other than through a default of the Contractor, be such as fairly to entitle the Contractor to an extension of time for the completion of the Works, the Engineer shall determine the amount of such extension and shall notify the Employer and the Contractor accordingly. Provided that the Engineer is not bound to take into account any extra or additional work or other special circumstances unless the Contractor has within twenty-eight days after such work has been commenced, or such circumstances have arisen, or as soon thereafter as is practicable, submitted to the Engineer's Representative full and detailed particulars of any extension of time to which he may consider himself entitled in order that such submission may be investigated at the time.

No Night or Sunday Work

45. Subject to any provision to the contrary contained in the Contract, none of the Permanent Works shall, save as hereinafter provided, be carried on during the night or on Sundays, if locally recognised as days of rest, or their locally recognised equivalent without the permission in writing of the Engineer's Representative, except when the work is unavoidable or absolutely necessary for the saving of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Engineer's Representative. Provided always that the provisions of this Clause shall not be applicable in the case of any work which it is customary to carry out by rotary or double shifts.

Rate of Progress

46. If for any reason, which does not entitle the Contractor to an extension of time, the rate of progress of the Works or any section is at any time, in the opinion of the Engineer, too slow to ensure completion by the prescribed time or extended time for completion, the Engineer shall so notify the Contractor in writing and the Contractor shall thereupon take such steps as are necessary and the Engineer may approve to expedite progress so as to complete the works or such section by the prescribed time or extended time. The Contractor shall not be entitled to any additional payment for taking such steps. If, as a result of any notice given by the Engineer under this Clause, the Contractor shall seek the Engineer's permission to do any work at night or on Sundays, if locally recognised as days of rest, or their locally recognised equivalent, such permission shall not be unreasonably refused.

Liquidated Damages for Delay

47.(1) If the Contractor shall fail to achieve completion of the Works within the time prescribed by Clause 43 hereof. then the Contractor shall pay to the Employer the sum stated in the Contract as liquidated damages for such default and not as a penalty for every day or part of a day which shall elapse between the time prescribed by Clause 43 hereof and the date of certified completion of the Works. The Employer may, without prejudice to any other method of recovery, deduct the amount of such damages from any monies in his hands, due or which may become due to the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Works, or from any other of his obligations and liabilities under the Contract.

Reduction of Liquidated Damages

47.(2) If, before the completion of the whole of the Works any part or section of the Works has been certified by the Engineer as completed, pursuant to Clause 48 hereof, and occupied or used by the Employer, the liquidated damages for delay shall, for any period of delay after such certificate and in the absence of alternative provisions in the Contract be reduced in the proportion which the value of the part or section so certified bears to the value of the whole of the Works.

Bonus for Completion

47.(3) If it is desired to provide in the Contract for the payment of a bonus in relation to completion of the Works or of any part or section thereof this shall be set out in Part II in the clause numbered 47.

Certification of Completion of Works

48.(1) When the whole of the Works have been substantially completed and have satisfactorily passed any final test that may be prescribed by the Contract, the Contractor may give a notice to that effect to the Engineer or to the Engineer's Representative accompanied by an undertaking to finish any outstanding work during the Period of Maintenance. Such notice and undertaking shall be in writing and shall be deemed to be a request by the Contractor for the Engineer to issue a Certificate of Completion in respect of the Works The Engineer shall, within twenty-one days of the date of delivery of such notice either issue to the Contractor, with a copy to the Employer, a Certificate of completion stating the date on which, in his opinion, the Works were substantially completed in accordance with the Contract or give instructions in writing to the Contractor specifying all the work which, in the Engineer's opinion, requires to be done by the Contractor before the issue of such Certificate. The Engineer shall also notify the Contractor of any defects in the Works affecting substantial completion that may appear after such instructions and before completion of the works specified therein. The Contractor shall be entitled to receive such Certificate of Completion within twenty-one days of completion to the satisfaction of the Engineer of the works so specified and making good any defects so notified.

Certification of Completion by Stages

48.(2) Similarly, in accordance with the procedure set out in sub-clause (1) of this Clause, the Contractor may request and the Engineer shall issue a Certificate of Completion in respect of:-

(a) Any section of the Permanent Works in respect of which a separate time for completion is provided in the Contract and

(b) Any substantial part of the Permanent Works which has been both completed to the satisfaction of the Engineer and occupied or used by the Employer.

48.(3) If any part of the Permanent Works shall have been substantially completed and shall have satisfactorily passed any final test that may be prescribed by the Contract, the Employer may issue a Certificate of Completion in respect of that part of the Permanent Works before completion of the whole of the Works and, upon the issue of such Certificate, the Contractor shall be deemed to have undertaken to complete any outstanding work in that part of the Works during the Period of Maintenance.

48.(4) Provided always that a Certificate of Completion given in respect of any section or part of the Permanent Works before completion of the whole shall not be deemed to certify completion of any ground or surfaces requiring reinstatement, unless such Certificate shall expressly so state.

MAINTENANCE AND DEFECTS

Definition of "Period of Maintenance"

49.(1) In these Conditions the expression "Period of Maintenance" shall mean the period of maintenance named in the Appendix to the Tender, calculated from the date of completion of the Works, certified by the Engineer in accordance with Clause 48 hereof, or, in the event of more than one certificate having been issued by the Engineer under the said Clause, from the respective dates so certified and in relation to the Period of Maintenance the expression "the Works" shall be construed accordingly.

Execution of Work of Repair, etc.

49.(2) To the intent that the Works shall at or as soon as practicable after the expiration of the Period of Maintenance be delivered to the Employer in the condition required by the Contract, fair wear and tear excepted, to the satisfaction of the Engineer, the Contractor shall finish the work, if any, outstanding at the date of completion, as certified under Clause 48 hereof, as soon as practicable after such date and shall execute all such work of repair, amendment, reconstruction, rectification and making good defects, imperfections, shrinkages or other faults as may be required of the Contractor in writing by the Engineer during the Period of Maintenance, or within fourteen days after its expiration, as a result of an inspection made by or on behalf of the Engineer prior to its expiration.

Cost of Execution of Work of Repair, etc.

49.(3) All such work shall be carried out by the Contractor at his own expense if the necessity thereof shall, in the opinion of the Engineer, be due to the use of materials of workmanship not in accordance with the Contract, or to neglect or failure on the part of the Contractor to comply with any obligation, expressed or implied, on the Contractor's part under the Contract. If, in the opinion of the Engineer, such necessity shall be due to any other cause, the value of such work shall be ascertained and paid for as if it were additional work.

Remedy on Contractor's Failure to carry out Work Required

49.(4) If the Contractor shall fail to do any such work as aforesaid required by the Engineer, the Employer shall be entitled to employ and pay other persons to carry out the same and if such works is work which, in the opinion of the Engineer, the Contractor was liable to do at his own expense under the Contract, then all expenses consequent thereon or incidental thereto shall be recoverable from the Contractor by the Employer, or may be deducted by the Employer from any monies due or which may become due to the Contractor.

Contractor to Search

50. The Contractor shall, if required by the Engineer in writing, search under the directions of the Engineer for the cause of any defect, imperfection or fault appearing during the progress of the Works or in the Period of Maintenance. Unless such defect, imperfection or fault shall be one for which the Contractor is liable under the Contract, the cost of the work

carried out by the Contractor in searching as aforesaid shall be borne by the Employer. If such defect, imperfection or fault shall be one for which the Contractor is liable as aforesaid, the cost of the work carried out in searching as aforesaid shall be borne by the Contractor and he shall in such case repair, rectify and make good such defect, imperfection or fault at his own expense in accordance with the provisions of Clause 49 hereof.

55

52.3

ALTERATIONS, ADDITIONS AND OMISSIONS

Variations

51.(1) The Engineer shall make any variation of the form, quality or quantity of the Works or any part thereof that may, in his opinion, be necessary and for that purpose, or if for any other reason it shall in his opinion be desirable, he shall have power to order the Contractor to do and the Contractor shall do any of the following:-

(a) Increase or decrease the quantity of any work included in the Contract,

(b) Omit any such work,

(c) Change the character or quality or kind of any such work,

(d) Change the levels, lines, position and dimensions of any part of the Works, and

(e) execute additional work of any kind necessary for the completion of the Works

and no such variation shall in any way vitiate or invalidate the Contract, but the value, if any, of all such variations shall be taken into account in ascertaining the amount of the Contract Price.

Orders for Variations to be in Writing

51.(2) No such variations shall be made by the Contractor without an order in writing of the Engineer. Provided that no order in writing shall be required for increase or decrease in the quantity of any work where such increase or decrease is not the result of an order given under this Clause, but is the result of the quantities exceeding or being less than those stated in the Bill of Quantities. Provided also that if for any reason the Engineer shall consider it desirable to give any such order verbally, the Contractor shall comply with such order and any confirmation in writing of such verbal order given by the Engineer, whether before or after the carrying out of the order, shall be deemed to be an order in writing within the meaning of this Clause. Provided further that if the Contractor shall within seven days confirm in writing to the Engineer and such confirmation shall not be contradicted in writing within fourteen days by the Engineer, it shall be deemed to be an order in writing by the Engineer.

Valuation of Variations

52.(1) All extra or additional work done or work omitted by order of the Engineer shall be valued at the rates and prices set out in the Contract if, in the opinion of the Engineer, the same shall be applicable. If the Contract does not contain any rates or prices applicable to the extra or additional work, then suitable rates or prices shall be agreed upon between the Engineer and the Contractor In the event of disagreement the Engineer shall fix such rates or prices as shall, in his opinion, be reasonable and proper.

Power of Engineer to Fix Rates

52.(2) Provided that if the nature or amount of any omission or addition relative to the nature or amount of the whole of the Works or to any part thereof shall be such that, in the opinion of the Engineer, the rate or price contained in the Contract for any item of the Works is, by reason of such omission or addition, rendered unreasonable or inapplicable, then a suitable rate or price shall be agreed upon between the Engineer and the Contractor. In the event of disagreement the Engineer shall fix such other rate or price as shall, in his opinion, be reasonable and proper having regard to the circumstances.

Provided also that no increase or decrease under sub-clause (1) of this Clause or variation of rate or price under sub-clause (2) of this Clause shall be made unless, as soon after the date of the order as is practicable and, in the case of extra or additional work, before the commencement of the work or as soon thereafter as is practicable, notice shall have been given in writing:

(a) by the Contractor to the Engineer of his intention to claim extra payment or a varied rate or price, or

(b) by the Engineer to the Contractor of his intention to vary a rate or price

Variations Exceeding 10 per cent

52.(3) If, on certified completion of the whole of the Works it shall be found that a reduction or increase greater than 10 (ten) per cent of the sum named in the Letter of Acceptance, excluding all fixed sums, provisional sums and allowance for dayworks, if any, results from:

(a) the aggregate effect of all Variation Orders, and

(b) all adjustments upon measurement of the estimated quantities set out in the Bill of Quantities, excluding all provisional sums and dayworks

but not from any other cause, the amount of the Contract Price shall be adjusted by such sum as may be agreed between the Contractor and the Engineer or, failing agreement, fixed by the Engineer having regard to all material and relevant factors, including the contractor's Site and general overhead costs of the Contract.

Daywork

52.(4) The Engineer may, if, in his opinion it is necessary or desirable, order in writing that any additional or substituted work shall be executed on a daywork basis. The Contractor shall then be paid for such work under the conditions set out in the Daywork Schedule included in the Contract and at the rates and prices affixed thereto by him in his Tender.

The Contractor shall furnish to the Engineer such receipts or other vouchers as may be necessary to prove the amounts paid and, before ordering materials, shall submit to the Engineer quotations for the same for his approval.

In respect of all work executed on a daywork basis, the Contractor shall, during the continuance of such work, deliver each day to the Engineer's Representative an exact list in duplicate of the names, occupation and time of all workmen employed on such work and a statement, also in duplicate, showing the description and quantity of all materials and plant used thereon or therefor (other than plant which is included in the percentage addition in accordance with the Schedule hereinbefore referred to). One copy of each list and statement will, if correct, or when agreed, be signed by the Engineer's Representative and returned to the Contractor.

At the end of each month the Contractor shall deliver to the Engineer's Representative a priced statement of the labour, material and plant, except as aforesaid, used and the Contractor shall not be entitled to any payment unless such lists and statements have been fully and punctually rendered Provided always that if the Engineer shall consider that for any reason the sending of such lists or statements by the Contractor, in accordance with the foregoing provision, was impracticable he shall nevertheless be entitled to authorise payment for such work, either as daywork, on being satisfied as to the time employed and plant and materials used on such work, or at such value therefor as shall, in his opinion, be fair and reasonable.

Claims

52.(5) The Contractor shall send to the Engineer's Representative once in every month an account giving particulars, as full and detailed as possible, of all claims for any additional payment to which the Contractor may consider himself entitled and of all extra or additional work ordered by the Engineer which he has executed during the preceding month.

No final or interim claim for payment for any such work or expense will be considered which has not been included in such particulars. Provided always that the Engineer shall be entitled to authorise payment to be made for any such work or expense, notwithstanding the Contractor's failure to comply with this condition, if the Contractor has, at the earliest practicable opportunity, notified the Engineer in writing that he intends to make a claim for such work.

PLANT, TEMPORARY WORKS AND MATERIALS

Plant, etc,
Exclusive Use f
the Works

53.(1) All Constructional Plant, Temporary Works and materials provided by the Contractor shall, when brought on to the Site, be deemed to be exclusively intended for the execution of the Works and the Contractor shall not remove the same or any part thereof, except for the purpose of moving it from one part of the Site to another, without the consent, in writing, of the Engineer, which shall not be unreasonably withheld.

Removal of Plant, etc.

53.(2) Upon completion of the Works the Contractor shall remove from the Site all the said Constructional Plant and Temporary Works remaining thereon and any unused materials provided by the Contractor.

Employer not Liable for Damage to Plant, etc.

53.(3) The Employer shall not at any time be liable for the loss of or damage to any of the said Constructional Plant, Temporary Works or materials save as mentioned in Clause 20 and 65 hereof.

Re-export of Plant

53.(4) In respect of any Constructional Plant which the Contractor shall have imported for the purposes of the Works, the Employer will assist the Contractor, where required, in procuring any necessary Government consent to the re-export of such Constructional Plant by the Contractor upon the removal thereof as aforesaid.

Customs Clearan

53.(5) The Employer will assist the Contractor, where required in obtaining clearance through the Customs of Constructional Plant, materials and other things required for the Works.

53.(6) Any other conditions affecting Constructional Plant, Temporary Works and materials, shall be set out in Part II in the Clause numbered 53 as may be necessary

Approval of Materials, ect., not implied

54. The operation of Clause 53 hereof shall not be deemed to imply any approval by the Engineer of the materials or other matters referred to therein nor shall it prevent the rejection of any such materials at any time by the Engineer.

MEASUREMENT

Quantities

55. The quantities set out in the Bill of Quantities are the estimated quantities of the work, but they are not to be taken as the actual and correct quantities of the Works to be executed by the Contractor in fulfilment of his obligations under the Contract.

Works to be Measured

56. The Engineer shall, except as otherwise stated, ascertain and determine by measurement the value in terms of the Contract of work done in accordance with the Contract. He shall, when he requires any part or parts of the Works to be measured, give notice to the Contractor's authorised agent or representative who shall forthwith attend or send a qualified agent to assist the Engineer or the Engineer's Representative in making such measurement, and shall furnish all particulars required by either of them. Should the Contractor not attend, or neglect or omit to send such agent, then the measurement made by the Engineer or approved by him shall be taken to be the correct measurement of the work. For the purpose of measuring such permanent work as is to be measured by records and drawings, the Engineer's Representative shall prepare records and drawings month by month of such work and the Contractor, as and when called upon to do so in writing, shall, within days, fourteen

attend to examine and agree such records and drawings with the Engineer's Representative and shall sign the same when so agreed. If the Contractor does not so attend to examine and agree such records and drawings, they shall be taken to be correct. If, after examination of such records and drawings, the Contractor does not agree the same or does not sign the same as agreed, they shall nevertheless be taken to be correct, unless the Contractor shall, within fourteen days of such examination, lodge with the Engineer's Representative, for decision by the Engineer, notice in writing of the respects in which such records and drawings are claimed by him to be incorrect.

Method of Measurement

57. The Works shall be measured net, notwithstanding any general or local custom, except where otherwise specifically described or prescribed in the Contract.

PROVISIONAL SUMS

Definition of "Provisional Sums"

58.(1) "Provisional Sum" means a sum included in the Contract and so designated in the Bill of Quantities for the execution of work or the supply of goods, materials, or services, or for contingencies, which sum may be used, in whole or in part, or not at all, at the direction and discretion of the Engineer. The Contract Price shall include only such amounts in respect of the work, supply or services to which such Provisional Sums relate as the Engineer shall approve or determine in accordance with this Clause.

Use of Provisional Sums

58.(2) In respect of every Provisional Sum the Engineer shall have power to order:

(a) Work to be executed, including goods, materials or services to be supplied by the Contractor. The Contract Price shall include the value of such work executed or such goods, materials or services supplied determined in accordance with Clause 52 hereof.

(b) Work to be executed or goods, materials or services to be supplied by a nominated Sub-Contractor as hereinafter defined. The sum to be paid to the Contractor therefor shall be determined and paid in accordance with Clause 59.(4) hereof.

(c) Goods and materials to be purchased by the Contractor. The sum to be paid to the Contractor therefor shall be determined and paid in accordance with Clause 59(4) hereof.

Production of Vouchers, etc.

58.(3) The Contractor shall, when required by the Engineer, produce all quotations, invoices, vouchers and accounts or receipts in connection with expenditure in respect of Provisional Sums.

NOMINATED SUB-CONTRACTORS

Definition of "Nominated Sub Contractors"

59.(1) All specialists, merchants, tradesmen and others executing any work or supplying any goods, materials or services for which Provisional Sums are included in the Contract, who may have been or be nominated or selected or approved by the Employer or the Engineer, and all persons to whom by virtue of the provisions of the Contract the Contractor is required to sub-let any work shall, in the execution of such work or the supply of such goods, materials or services, be deemed to be sub-contractors employed by the Contractor and are referred to in this Contract as "nominated Sub-Contractors".

Nominated Sub-Contractors; Objection to Nomination

59.(2) The Contractor shall not be required by the Employer or the Engineer or be deemed to be under any obligation to employ any nominated Sub-Contractor against whom the Contractor may raise reasonable objection, or who shall decline to enter into a sub-contract with the Contractor containing provisions:

(a) that in respect of the work, goods, materials or services the subject of the sub-contract, the nominated Sub-Contractor will undertake towards the Contractor the like obligations and liabilities as are imposed on the Contractor towards the Employer by the terms of the Contract and will save harmless and indemnify the Contractor from and against the same and from all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection therewith, or arising out of or in connection with any failure to perform such obligations or to fulfil such liabilities, and

(b) that the nominated Sub-Contractor will save harmless and indemnify the Contractor from and against any negligence by the nominated Sub-Contractor, his agents, workmen and servants and from and against any misuse by him or them of any Constructional Plant or Temporary Works provided by the Contractor for the purposes of the Contract and from all claims as aforesaid.

Design Requirements to be Expressly Stated

59.(3) If in connection with any Provisional Sum the services to be provided include any matter of design or specification of any part of the Permanent Works or of any equipment or plant to be incorporated therein, such requirement shall be expressly stated in the Contract and shall be included in any nominated Sub-Contract. The nominated Sub-Contract shall specify that the nominated Sub-Contractor providing such services will save harmless and indemnify the Contractor from and against the same and from all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection with any failure to perform such obligations or to fulfil such liabilities.

Payments to Nominated Sub-Contractors

59.(4) For all work executed or goods, materials, or services supplied by any nominated Sub-Contractor, there shall be included in the Contract Price:

(a) The actual price paid or due to be paid by the Contractor, on the direction of the Engineer, and in accordance with the Sub-Contract;

(b) the sum, if any, entered in the Bill of Quantities for labour supplied by the Contractor in connection therewith, or if ordered by the Engineer pursuant to Clause 58(2)(b) hereof, as may be determined in accordance with Clause 52 hereof;

(c) in respect of all other charges and profit, a sum being a percentage rate of the actual price paid or due to be paid calculated, where provision has been made in the Bill of Quantities for a rate to be set against the relevant Provisional Sum, at the rate inserted by the Contractor against that item or, where no such provision has been made, at the rate inserted by the Contractor in the Appendix to the Tender and repeated where provision for such is made in a special item provided in the Bill of Quantities for such purpose.

Certification of Payments to Nominated Sub-Contractors

59.(5) Before issuing, under Clause 60 hereof, any certificate, which includes any payment in respect of work done or goods, materials or services supplied by any nominated Sub-Contractor, the Engineer shall be entitled to demand from the Contractor reasonable proof that all payments, less retentions, included in previous certificates in respect of the work or goods, materials or services of such nominated Sub-Contractor have been paid or discharged by the Contractor, in default whereof unless the Contractor shall

(a) inform the Engineer in writing that he has reasonable cause for withholding or refusing to make such payments and

(b) produce to the Engineer reasonable proof that he has so informed such nominated Sub-Contractor in writing,

the Employer shall be entitled to pay to such nominated Sub-Contractor direct, upon the certificate of the Engineer, all payments, less retentions, provided for in the Sub-Contract, which the Contractor has failed to make to such nominated Sub-Contractor and to deduct by way of set-off the amount so paid by the Employer from any sums due or which may become due from the Employer to the Contractor.

Provided always that, where the Engineer has certified and the Employer has paid direct as aforesaid, the Engineer shall in issuing any further certificate in favour of the Contractor deduct from the amount thereof the amount so paid, direct as aforesaid, but shall not withhold or delay the issue of the certificate itself when due to be issued under the terms of the Contract.

Assignement of Nominated Sub-Contractors' Obligations

59.(6) In the event of a nominated Sub-Contractor, as hereinbefore defined, having undertaken towards the Contractor in respect of the work executed, or the goods, materials or services supplied by such nominated Sub- Contractor, any continuing obligation extending for a period exceeding that of the Period of Maintenance under the Contract, the Contractor shall at any time, after the expiration of the Period of Maintenance, assign to the Employer, at the Employer's request and cost, the benefit of such obligation for the unexpired duration thereof.

CERTIFICATES AND PAYMENT

Certificates and Payment

60.(1) Unless otherwise provided, payments shall be made at monthly intervals in accordance with the Conditions set out in Part II in the Clause numbered 60.

Advances on Constructional Plant and Materials

60.(2) Where advances are to be made by the Employer to the Contractor in respect of the Constructional Plant and material, the conditions of payment and repayment shall be as set out in Part II in the Clause numbered 60.

Payment in Foreign Currencies

60.(3) If the execution of the Works shall necessitate the importation of materials, plant or equipment from a country other than that in which the Works are being executed, or if the Works or any part thereof are to be executed by labour imported from any other such country, or if any other circumstances shall render it necessary or desirable, a proportion of the payments to be made under the Contract shall be made in the appropriate foreign currencies and in accordance with the provisions of Contract Documents. The conditions under which such payments are to be made shall be set out in Part II in the Clause numbered 60.(2) and 60.(4).

Approval only by Maintenance Certificate

61. No certificate other than the Maintenance Certificate referred to in Clause 62 hereof shall be deemed to constitute approval of the Works.

Maintenance Certificate

62.(1) The Contract shall not be considered as completed until a Maintenance Certificate shall have been signed by the Engineer and delivered to the Employer stating that the Works have been completed and maintained to his satisfaction. The Maintenance Certificate shall be given by the Engineer within twenty-eight days after the expiration of the Period of Maintenance, or, if different periods of maintenance shall become applicable to different sections or parts of the Works the expiration of the latest such period, or as soon thereafter as any works ordered during such period, pursuant to Clause 49 and 50 hereof, shall have been completed to the satisfaction of the Engineer and full effect shall be given to this Clause, notwithstanding any previous entry on the Works or the taking possession, working or using thereof or any part thereof by the Employer. Provided always that the issue of the Maintenance Certificate shall not be a condition precedent to payment to the Contractor of the second portion of the retention money in accordance with the conditions set out in Part II in the Clause numbered 60.

Cessation of Employer's Liability

62.(2) The Employer shall not be liable to the Contractor for any matter or thing arising out of or in connection with the Contract to the execution of the Works, unless the Contractor shall have made a claim in writing in respect thereof before the giving of the Maintenance Certificate under this Clause.

Unfulfilled Obligations

62.(3) Notwithstanding the issue of the Maintenance Certificate the Contractor and, subject to sub-clause (2) of this Clause, the Employer shall remain liable for the fulfilment of any obligation incurred under the provisions of the Contract prior to the issue of the Maintenance Certificate which remains unperformed at the time such Certificate is issued and, for the purposes of determining the nature and extent of any such obligation, the Contract shall be deemed to remain in force between the parties hereto.

REMEDIES AND POWERS

Default of Contractor

63.(1) If the Contractor shall become bankrupt, or have a receiving order made against him, or shall present his petition in bankruptcy, or shall make an arrangement with or assignement in favour of his creditors, or shall agree to carry out the Contract under a committee of inspection of his creditors or, being a corporation, shall go into liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), or if the Contractor shall assign the Contract without the consent in writing of the Employer first obtained, or shall have an execution levied on his goods, or if the Engineer shall certify in writing to the Employer that in his opinion the Contractor:

(a) has abandoned the Contract, or

(b) without reasonable excuse has failed to commence the Works or has suspended the Progress of the Works for one month after receiving from the Engineer written notice to proceed, or

(c) has failed to remove materials from the Site or to pull down and replace work for twenty-eight days after receiving from the Engineer written notice that the said materials or work had been condemned and rejected by the Engineer under these conditions, or

(d) despite previous warnings by the Engineer, in writing, is not executing the Works in accordance with the Contract, or is persistently or flagrantly neglecting to carry out his obligations under the Contract, or

(e) has, to the detriment of good workmanship, or in defiance of the Engineer's instructions to the contrary, sub-let any part of the Contract

then the Employer may, after giving fourteen days' notice in writing to the Contractor, enter upon the Site and the Works and expel the Contractor therefrom without thereby voiding the Contract or releasing the Contractor from any of his obligations or liabilities under the Contract, or affecting the rights and powers conferred on the Employer or the Engineer by the Contract, and may himself complete the Works or may employ any other contractor to complete the Works. The Employer or such other contractor may use for such completion so much of the Constructional Plant Temporary Works and materials, which have been deemed to be reserved exclusively for the execution of the Works, under the provisions of the Contract, as he or they may think proper, and the Employer may, at any time, sell any of the said Constructional Plant, Temporary Works and unused materials and apply the proceeds of sale in or towards the satisfaction of any sums due or which may become due to him from the Contractor under the Contract.

Valuation at Dat
of Forfeiture

63.(2) The Engineer shall, as soon as may be practicable after any such entry and expulsion by the Employer, fix and determine ex parte, or by or after reference to the parties, or after such investigation or enquiries as he may think fit to make or institute, and shall certify what amount, if any, had at the time of such entry and expulsion been reasonably earned by or would reasonably accrue to the Contractor in respect of work then actually done by him under the Contract and the value of any of the said unused or partially used materials, any Constructional Plant and any Temporary Works.

Payment after
forfeiture

63.(3) If the Employer shall enter and expel the Contractor under this Clause, he shall not be liable to pay to the Contractor any money on account of the Contract until the expiration of the Period of Maintenance and thereafter until the costs of execution and maintenance, damages for delay in completion, if any, and all other expenses incurred by the Employer have been ascertained and the amount thereof certified by the Engineer The Contractor shall then be entitled to receive only such sum or sums, if any, as the Engineer may certify would have been payable to him upon due completion by him after deducting the said amount. If such amount shall exceed the sum which would have been payable to the Contractor on due completion by him, then the Contractor shall, upon demand, pay to the Employer the amount of such excess and it shall be deemed a debt due by the Contractor to the Employer and shall be recoverable accordingly.

Urgent Repairs

64. If, by reason of any accident, or failure, or other event occurring to in or in connection with the Works, or any part thereof, either during the execution of the Works, or during the Period of Maintenance, any remedial or other work or repair shall, in the opinion of the Engineer or the Engineer's Representative, be urgently necessary for the safety of the Works and the Contractor is unable or unwilling at once to do such work or repair, the Employer may employ and pay other persons to carry out such work or repair as the Engineer or the Engineer's Representative may consider necessary. If the work or repair so done by the Employer is work which, in the opinion of the Engineer, the Contractor was liable to do at his own expense under the Contract, all expenses properly incurred by the Employer in so doing shall be recoverable from the Contractor by the Employer, or may be deducted by the Employer from any monies due or which may become due to the Contractor. Provided always that the Engineer or the Engineer's Representative, as the case may be, shall, as soon after the occurrence of any such emergency as may be reasonably practicable, notify the Contractor thereof in writing.

SPECIAL RISKS

65. Notwithstanding anything in the Contract contained:-

No Liability fo
War, etc. Risks

65.(1) The Contractor shall be under no liability whatsoever whether by way of indemnity or otherwise for or in respect of destruction of or damage to the Works, save to work, condemned under the provisions of Clause 39 hereof prior to the occurrence of any special risk hereinafter mentioned, or to property whether of the Employer or third parties, or for or in respect of injury or loss of life which is the consequence of any special risk as hereinafter defined. The Employer shall indemnify and save harmless the Contractor against and from the same and against and from all claims, proceedings, damages, costs, charges and expenses whatsoever arising thereout or in connection therewith.

Damage to Works, etc. by Special Risks

65.(2) If the Works or any materials on or near or in transit to the Site, or any other property of the Contractor used or intended to be used for the purposes of the Works, shall sustain destruction or damage by reason of any of the said special risks the Contractor shall be entitled to payment for:

(a) any permanent work and for any materials so destroyed or damaged,

and, so far as may be required by the Engineer, or as may be necessary for the completion of the Works, on the basis of cost plus such profit as the Engineer may certify to be reasonable;

(b) replacing or making good any such destruction or damage to the Works;

(c) replacing or making good such materials or other property of the Contractor used or intended to be used for the purposes of the Works

Projectile, Missile, etc.

65.(3) Destruction, damage, injury or loss of life caused by the explosion or impact whenever and wherever occurring of any mine, bomb, shell, grenade or other projectile, missile, munition or explosive of war, shall be deemed to be a consequence of the said special risks

Increased Costs arising from Special Risks

65.(4) The Employer shall repay to the Contractor any increased cost of or incidental to the execution of the Works, other than such as may be attributable to the cost of reconstructing work condemned under the provisions of Clause 39 hereof, prior to the occurrence of any special risk, which is howsoever attributable to or consequent on or the result of or in any way whatsoever connected with the said special risks, subject however to the provisions in this Clause hereinafter contained in regard to outbreak of war, but the Contractor shall as soon as any such increase of cost shall come to his knowledge forthwith notify the Engineer therof in writing.

Special Risks

65.(5) The special risks are war, hostilities (whether war be declared or not), invasion, act of foreign enemies, the nuclear and pressurewaves risk described in Clause 20(2) hereof, or insofar as it relates to the country in which the Works are being or are to be executed or maintained, rebellion, revolution, insurrection, military or usurped power, civil war, or unless solely restricted to the employees of the Contractor or of his Sub-Contractors and arising from the conduct of the Works, riot, commotion or disorder.

Outbreak of War

65.(6) If, during the currency of the Contract, there shall be an outbreak of war, whether war is declared or not, in any part of the world which, whether financially or otherwise, materially affects the execution of the Works, the Contractor shall unless and until the Contract is terminated under the provisions of this Clause, continue to use his best endeavours to complete the execution of the Works. Provided always that the Employer shall be entitled at any time after such outbreak of war to terminate the Contract by giving written notice to the Contractor and, upon such notice being given, this Contract shall, except as to the rights of the parties under this Clause and to the operation of Clause 67 hereof, terminate, but without prejudice to the rights of either party in respect of any antecedent breach thereof.

Removal of Plant on Termination

65.(7) If the Contract shall be terminated under the provisions of the last preceding sub-clause, the Contractor shall, with all reasonable despatch, remove from the Site all Constructional Plant and shall give similar facilities to his Sub-Contractors to do so.

Payment if Contract Terminated

65.(8) If the Contract shall be terminated as aforesaid, the Contractor shall be paid by the Employer, insofar as such amounts or items shall not have already been covered by payments on account made to the Contractor, for all work executed prior to the date of termination at the rates and prices provided in the Contract and in addition:

(a) The amounts payable in respect of any preliminary items, so far as the work or service comprised therein has been carried out or performed, and a proper proportion as certified by the Engineer of any such items, the work or service comprised in which has been partially carried out or performed.

(b) The cost of materials or goods reasonably ordered for the Works which shall have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery, such materials or goods becoming the property of the Employer upon such payments being made by him.

(c) A sum to be certified by the Engineer being the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the whole of the Works insofar as such expenditure shall not have been covered by the payments in this sub-clause before mentioned.

(d) Any additional sum payable under the provisions of sub-clauses (1), (2) and (4) of this Clause.

(e) The reasonable cost of removal of Constructional Plant under sub-clause (7) of this Clause and, if required by the Contractor, return thereof to the Contractor's main plant yard in his country of registration or to other destination, at no greater cost

(f) The reasonable cost of repatriation of all the Contractor's staff and workmen employed on or in connection with the Works at the time of such termination.

Provided always that against any payments due from the Employer under this sub-clause, the Employer shall be entitled to be credited with any outstanding balances due from the Contractor for advances in respect of Constructional Plant and materials and any other sums which at the date of termination were recoverable by the Employer from the Contractor under the terms of the Contract.

In the event that the performance of the Contract is delayed by force majeure, either party shall, within 15 calendar days of the commencement of any such delay, give the other party written notice thereof including a statement describing force majeure and its effect upon the performance of the Contract.
If the delay is excusable the Employer and Contractor shall, within 10 days after receipt of such notice, consult regarding action to be taken

In the event of a force majeure, Contractor, unless directed otherwise in writing by the Employer shall continue to undertake and perform the duties set forth in the Contract as far as reasonably practicable.

Within 15 calendar days after the termination of any such delay, Contractor shall file a written notice with the Employer specifying the actual duration of the delay and the delay impact with respect to each of the affected key dates for the completion of the works. Failure to give either of the above notices shall be sufficient ground for denial of an extension of time. The Employer will evaluate Contractor's notice specifying the actual duration of the delay and the delay impact and an equitable adjustement to the time of performance of the affected key date(s) set forth in the execution program of the completion of works.

If a force majeure event delays the performance of the Contract beyond a continous period of 60 calendar days, Contractor shall also be entitled to additional costs as a consequence of force majeure beyond the said 60 calendar days, for the period of time commencing with the 61st day of force majeure, in accordance with article entitled "Suspension".

FRUSTRATION

Payment in Event of Frustration

66. If a war, or other circumstances outside the control of both parties, arises after the Contract is made so that either party is prevented from fulfilling his contractual obligations, or under the law governing the Contract, the parties are released from further performance, then the sum payable by the Employer to the Contractor in respect of the work executed shall be the same as that which would have been payable under Clause 65 hereof if the Contract had been terminated under the provisions of Clause 65 hereof

SETTLEMENT OF DISPUTES

Settlement of Disputes - Arbitration

67. If any dispute or difference of any kind whatsoever shall arise between the Employer and the Contractor or the Engineer and the Contractor in connection with, or arising out of the Contract, or the execution of the Works, whether during the progress of the Works or after their completion and whether before or after the termination, abandonment or breach of the Contract, it shall, in the first place, be referred to and settled by the Engineer who shall, within a period of ninety days after being requested by either party to do so, give written notice of his decision to the Employer and the Contractor. Subject to arbitration, as hereinafter provided, such decision in respect of every matter so referred shall be final and binding upon the Employer and the Contractor and shall forthwith be given effect to by the Employer and by the Contractor, who shall proceed with the execution of the Works with all due diligence whether he or the Employer requires arbitration, as hereinafter provided, or not. If the Engineer has given written notice of his decision to the Employer and the Contractor and no claim to arbitration has been communicated to him by either the Employer or the Contractor within a period of ninety days from receipt of such notice the said decision shall remain final and binding upon the Employer and the Contractor. If the Engineer shall fail to give notice of his decision, as aforesaid, within a period of ninety days after being requested as aforesaid, or if either the Employer or the Contractor be dissatisfied with any such decision, then and in any such case either the Employer or the Contractor may within ninety days after receiving notice of such decision, or within ninety days after the expiration of the first-named period of ninety days, as the case may be, require that the matter or matters in dispute be referred to arbitration as hereinafter provided. All

يتبع أمره فورا

disputes or differences in respect of which the decision, if any, of the Engineer has not become final and binding as aforesaid shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed under such Rules. The said arbitrator/s shall have full power to open up, revise and review any decision, opinion, direction, certificate or valuation of the Engineer. Neither party shall be limited in the proceedings before such arbitrator/s to the evidence or arguments put before the Engineer for the purpose of obtaining his said decision. No decision given by the Engineer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator/s on any matter whatsoever relevant to the dispute or difference referred to the arbitrator/s as aforesaid. The reference to arbitration may proceed notwithstanding that the Works shall not then be or be alleged to be complete, provided always that the obligations of the Employer, the Engineer and the Contractor shall not be altered by reason of the arbitration being conducted during the progress of the Works.

NOTICES

Service of Notices on Contractor

68.(1) All certificates, notices or written orders to be given by the Employer or by the Engineer to the Contractor under the terms of the Contract shall be served by sending by post to or delivering the same to the Contractor's principal place of business, or such other address as the Contractor shall nominate for this purpose.

Service of Notices on Employer or Engineer

68.(2) All notices to be given to the Employer or to the Engineer under the terms of the Contract shall be served by sending by post or delivering the same to the respective addresses nominated for that purpose in Part II of these Conditions.

Change of Address

68.(3) Either party may change a nominated address to another address in the country where the Works are being executed by prior written notice to the other party and the Engineer may do so by prior written notice to both parties.

DEFAULT OF EMPLOYER

69. The foreign currency Letter of Credit will state that in the event the Employer fails to certify partial payment invoices for payment, the respective bank for foreign currency cost shall pay the amount of Contractor's invoice upon written certification from Contractor that the invoice was submitted to the Employer with the documentation required and that the Employer has either not returned a copy of the invoice approved or either the Employer or the Engineer has not provided a written explanation of its disapproval of any item in the invoice, within a 60 day period.
The Employer approval is required for payment of Final Payment invoice.

CHANGES IN COSTS AND LEGISLATION

Increase or Decrease of Costs

70.(1) Contract price is firm and not subject to any escalation.

CURRENCY AND RATES OF EXCHANGE

Currency restrictions

71. Deleted .

Rates of Exchange

72. Deleted.

NOTE

For Conditions of Particular Application - See PART II.
For Conditions of Particular Application to Dredging and Reclamation Work - See Part III.

mf